

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

<b>NEW GENERATION DEVICES, INC.,</b>	:	
<b>Plaintiffs,</b>	:	<b>Civil Action No. 04-2583(KSH)</b>
	:	
	:	
<b>v.</b>	:	
	:	
<b>SLOCUM ENTERPRISES, INC., et al.,</b>	:	<b>REPORT &amp; RECOMMENDATION</b>
<b>Defendants</b>	:	

This matter having come before the Court on the motion to dismiss the Complaint for lack of personal jurisdiction; and the Hon. Katharine S. Hayden having referred this motion to the Undersigned for a report and recommendation; and the Court having considered the submissions, arguments, and representations of the parties; and for the reasons set forth in the Report and Recommendation delivered on the record on May 23, 2005; and for good cause shown,

IT IS ON THIS 28<sup>th</sup> day of May, 2005

RECOMMENDED THAT the Hon. Katharine S. Hayden dismiss the Complaint against both defendants for lack of personal jurisdiction<sup>1</sup>; and

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<sup>1</sup>By way of Order dated May 23, 2005, the Court ordered the parties to show cause why this case should not be transferred to the District of Oregon, District of Columbia, or another proper forum. In response to the Order to Show Cause, the parties both stated that the case should not be transferred to Oregon as plaintiff has already successfully argued that there is no personal jurisdiction over it and the defendants want to pursue the jurisdictional appeal. Furthermore, the parties have asserted that the case should not be transferred to the federal district where the Patent and Trademark Office is located because, to the parties, it is not clear that a court in that district would have personal jurisdiction. Furthermore, no party consents to such a transfer. The Court is not going to decide in this case whether or not jurisdiction lies in that forum but its silence is not meant to be construed that it agrees with the contentions of the parties.

Curiously, no party has suggested that it either will agree to go to a forum where jurisdiction clearly exists over the other party and no party has suggested a forum where the case could have been otherwise been brought. The Court, therefore, questions whether or not either party truly seeks to pursue their claims. Therefore, while the Court believes it has the authority to transfer a case to a forum where it might otherwise have been brought, it will decline to do so.

THE PARTIES are hereby advised that they have 10 days from the date of this Report and Recommendation to file any objections.

s/Patty Shwartz  
UNITED STATES MAGISTRATE JUDGE